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United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942-43

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No. 1033  
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PAUL DOUCHAN,  
Petitioner and Appellant below,  
vs.  
UNITED STATES OF AMERICA,  
Appellee below  
---

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SIXTH CIRCUIT  
AND BRIEF IN SUPPORT THEREOF.  
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**PETITION FOR WRIT OF CERTIORARI**  
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**TO: THE HONORABLE HARLAN FISKE STONE, CHIEF JUSTICE**  
**OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES**  
**OF THE SUPREME COURT OF THE UNITED STATES:**

Your petitioner respectfully shows:

**A.**

**SUMMARY STATEMENT OF THE MATTER INVOLVED**

Petitioner was indicted in the United States Court by the Grand Jury for the Eastern District of Michigan, South-

ern Division, at the June term of 1938, and charged with violations of Section 52 (B), Title 11, U. S. C.

The indictment charged petitioner in two counts with wilfully, maliciously, knowingly and fraudulently concealing from Theodore Hughes, Trustee of petitioner's estate in bankruptcy upon *August 15, 1936*, real estate bonds of Bankers Trust Company of Detroit, Michigan, of the par value of \$6,200, Series N. 1452, and real estate bonds of said Bankers Trust Company with a par value of \$20,000, Series N. 1452 (R. 113-114).

At the trial, the Government contended, and offered evidence to show, that the bonds were the property of petitioner and not his brother, Mike Prodanov, and that the transfers were made by petitioner to avoid his creditors; while petitioner contended, and offered evidence to show, that the bonds in question were purchased by him for and on behalf of his brother, Mike Prodanov (the petitioner having changed his name through the Probate Court from Paul Douchan Prodanov to Paul Douchan, R. 49); and that the money was furnished by his brother, Mike Prodanov, who was a blacksmith living in New York at the time of the purchase but who later moved to Detroit.

Petitioner's voluntary petition in bankruptcy was filed February 19, 1936, and disclosed debts in the amount of \$54,000 and no assets.

The then counsel for petitioner at the trial stipulated that all of these \$26,200 worth of Bankers Trust Company bonds, Series No. N. 1452, previously registered in the name of Paul Douchan, petitioner herein, were identically the same bonds as were later transferred as follows:

On September 21, 1934, Paul Douchan (petitioner) transferred \$23,200.00 worth of these bonds to Earle W. Evans; on November 27, 1934, Paul Douchan (petitioner) trans-

ferred \$4,700.00 of these bonds to Earle W. Evans; on November 27, 1934, Earle W. Evans transferred back to Paul Douchan (petitioner) \$20,000.00 worth of the same bonds; on April 6, 1936, Earle W. Evans transferred \$6,200.00 worth of the same bonds to Mike Prodanov; on April 7, 1936, Paul Douchan (petitioner) transferred \$20,000.00 worth of these same bonds to Mike Prodanov. No evidence of consideration was shown for any of the transfers (R. 33).

Hughes, the Trustee from whom petitioner was charged with concealing the bonds on August 15, 1936, did not testify but counsel for petitioner, in order to coöperate and avoid loss of time waiting for Trustee Hughes, who failed to appear in the trial court, admitted that none of the bonds mentioned in the indictment were received or turned over to Mr. Hughes, the original Trustee (R. 35-36). Nevertheless Donald P. Kipp, over objection by petitioner's counsel, testified that he was appointed trustee on the 30th day of September, 1937, and that neither the petitioner or his brother, Mike Prodanov, turned over the bonds to him (R. 28-29).

The files in the petitioner's bankruptcy case were introduced in evidence by the Government (R. 11) and Malcolm Shaw, a deputy clerk of the Court, testified that on August 19, 1936, a petition for discharge was filed; and that on October 2, 1936, specification and appearance of Mammie Crawford, a creditor, in opposition to discharge was filed (R. 137). The certified copy of the calendar entries in the bankruptcy proceedings show that several hearings were had on the above specifications in opposition to discharge, and on February 18, 1937, the Trustee's final report of no assets was filed, followed by an order closing the estate entered by the Referee in Bankruptcy on March 31, 1937 (R. 103-104). The report of the Referee on specifications

in opposition to discharge recommended objections to petitioner's discharge be overruled and said bankrupt's discharge be granted (R. 116-124).

The docket further shows that in December, 1941, petitions by creditors to reopen the bankrupt estate were again filed with the Referee in Bankruptcy and several hearings had thereon; and on March 25, 1942, an order for re-reference was entered; exceptions to findings of the Referee as Special Master were denied on May 18, 1942; following this Herbert J. Pevos was elected trustee and qualified; on June 15, 1942 an order was entered setting aside and quashing order for reopening of estate; and on June 30, 1942, an order was entered again closing the file (R. 105-108) and pursuant thereto an order was entered by the United States District Judge—" \* \* \*. It is further ordered that the discharge of the above named bankrupt be and the same is hereby reinstated and perpetuated" (R. 136).

NOTE: In respect to the rules of this Court to be concise, counsel includes only those portions of the instructions which relate directly to the proposition presented in this application.

The Court instructed the jury as follows:

"Ladies and Gentlemen of the Jury: The defendant here, Paul Douchan, is charged with a violation of Section 52 B, Title XI of the Bankruptcy Code of the United States Code, which reads as follows:

'A person shall be punished by (and the punishment is given) upon conviction of the offense of having knowingly and fraudulently (1) concealed from the Receiver or Custodian, Trustee, Marshall, or other officer of the Court charged with the control or custody of property, or from creditors in any proceedings under this Bankruptcy Act any property belonging to the estate

of a bankrupt or (2) making a false oath in or relation to any proceedings under this act or (3) presented under oath any false claims for proof against an estate of a bankrupt'—

That doesn't apply here. Number (3) doesn't apply here. Number 4 doesn't apply. Number 5 'Receive or attempt to obtain any money or property.' I think the rest does not apply. That is right, the punishment is provided in the first part of the Act (R. 87).

“The charge is in two counts that Paul Douchan wilfully, knowingly, and fraudulently concealed certain of his assets in one group, \$20,000 in bonds of Bankers Trust Company, and in another group some \$6,000 in bonds of the Bankers Trust Company (R. 88).

“The Government in this case claims that Paul Douchan over a period of years and because he was harrassed by creditors, sought to play both fast and loose with the property he had, that he was real owner of the Vancouver Hall Apartments, and that in 1930, he was in trouble with a man by the name of Crawford. Now, the merits of Crawford's claim is no part of this case, I mean whether he had a good clear claim or whether he didn't have a good claim is immaterial. The fact remains that the defendant presented his name as among those whom he owed and it is part of the \$52,000.00 of liabilities. But whether Crawford had a good claim or not is immaterial. The claim is that Crawford, I think, in 1930 tried to sue the defendant, Douchan. He didn't succeed and then shortly thereafter in 1931, a deed was made out to Mike Prodanov, his brother. Douchan is the brother admittedly of Prodanov. It is the claim of the Government that at that time, Prodanov gave a power of attorney back to Paul and that in that way, Paul really protected his interest in the property” (R. 91).



The Court then instructed the jury as to circumstantial evidence and continued thus:

“On the other hand, if you feel that the circumstances plus the admitted facts convince you beyond a reasonable doubt that they were Paul Douchan’s bonds and he did this, went through these various steps as a protection to himself and that he should, if they were hid, he should have made a disclosure to the Bankruptcy Court, then of course, Paul Douchan is guilty, here and I don’t want to go into the various claims of the Government showing that this is the only reasonable conclusion that you can arrive at” (R. 92).

The record reveals that the indictment was not read to the jury, or given to the jury, by the Court or otherwise, and that the elements of the offense, date, place, or vicinage of the alleged offense was not stated or explained to the jury at any time during the trial or in the Court’s instructions.

The instructions concluded, the case was submitted to the jury, and the jury returned a verdict of “guilty as charged” (R. 97).

Whereupon petitioner was sentenced to a penitentiary for and during a term of two years on each count, the terms of imprisonment to run concurrently (R. 98).

A motion by petitioner to set aside verdict and vacate sentence or a new trial was heard and denied by the trial judge (R. 137-146).

Petitioner appealed to the United States Circuit Court of Appeals for the Sixth Circuit and judgment and sentence of the District Court was affirmed April 15th, 1943.

In the motion for a new trial and on appeal, petitioner contended in part that the Court’s error in charging the

jury in the terms of the amended statute, rather than in the terms in effect at the time of the alleged offense, thus introducing the inapplicable element of concealment from creditors, in conjunction with the Court's repeated statement in the instructions that the Government's contention was that petitioner had concealed his property from creditors and the considerable evidence of petitioner's difficulties with creditors in 1930, led the jury to believe that petitioner could be found guilty as charged if he simply made transfers in fraud of creditors, while in fact the only crime of which he could have been guilty in 1936, was concealment of his assets from the Trustee, as charged in the indictment.

### B.

#### REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The Circuit Court of Appeals in this case has decided a Federal question in a way probably in conflict with applicable decisions of this Honorable Court, in that the said Court held that a verdict based on either of two or more acts, one of which was not an offense and two of which were not included in the indictment, was a valid verdict, in conflict with *Pierce v. United States*, 314 U. S. 306, *Stromberg v. California*, 283 U. S. 359, and *Coffin v. United States*, 156 U. S. 432.

2. The Circuit Court of Appeals has sanctioned a proceeding wherein the lower court so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervision, in the respect specified in the preceding paragraph.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue under the seal of this court, directed to

the United States Circuit Court for the Sixth Circuit commanding that Court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court of Appeals for the Sixth Circuit had in the case numbered and entitled on its docket Number 9145 —Paul Douchan, Appellant, v. United States of America, Appellee, to the end that this cause may be reviewed and determined by this Honorable Court as provided for by the statutes of the United States, and the judgment herein of said Circuit Court of Appeals for the Sixth Circuit be reversed by this Court, and for such further relief as to this Court may seem just.

Dated May 15, 1943.

PAUL DOUCHAN,  
By CHARLES A. MEYER,  
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Detroit, Michigan.